UNITED
NATIONS

CCPR

international covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/79/Add.120
25 April 2000

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Mongolia

GE.00-41625 (E)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Mongolia

1. The Committee considered the fourth periodic report of Mongolia (CCPR/C/103/Add.7) at its1825th and 1826th meetings, held on 22 and 23 March 2000, and adopted the following comments at its 1835th meeting, held on 29 March 2000.

A. Introduction

2. The Committee expresses its satisfaction at the submission of the fourth periodic report of Mongolia, which contains valuable information on key legal developments in Mongolia, and welcomes the opportunity to examine the report in a frank discussion with the delegation. However, the Committee deeply regrets the paucity of information presented, both in the report and in many of the answers given orally by the delegation, on the enjoyment in practice of the rights provided for in the Covenant. The lack of such information severely impairs the Committee's ability to carry out its responsibilities to assess the situation in regard to the implementation of the Covenant.

3. The Committee recognizes the substantial progress made towards the establishment of democratic institutions and the enactment of legislation which seeks to ensure many Covenant rights.

B. Positive aspects

4. The State party is commended for taking account in the report of the Committee's concluding observations following its examination of the third periodic report.

5. The Committee notes with satisfaction that the State party has welcomed international assistance in institution-building and capacity-building, particularly in relation to the protection of human rights.

6. The Committee welcomes the Law on the Freedom of the Press. It also welcomes the improvements with respect to freedom of association made possible by the 1997 Law on Non-governmental Organizations and the emergence of a free Bar Association.

C. Principal subjects of concern and recommendations

7. The status of the Covenant in domestic law is not clear, in view of the fact that the Constitution (art. 10 (3)) stands in conjunction with laws of lower status; the Committee notes that no example was adduced of reliance on any article of the Covenant in any court proceedings to date.

It should be made clear by law that Covenant rights shall have superior status and shall prevail over domestic law in case of any conflict.

8. Many areas of concern remain in relation to discrimination against women and the inability of women fully to enjoy Covenant rights (arts. 3 and 26 of the Covenant). In particular, attention has been drawn to:

(a) A general deterioration in the status of women in society, especially in the political sphere, despite their high standard of competence;

(b) The acute problem of maternal mortality, due in part to unsafe abortions, and the unavailability of family planning advice and facilities;

(c) Discrimination against women in private sector employment, with effective impunity of employers in the face of court judgements;

(d) Failure to prosecute persons engaged in organizing prostitution or to adopt effective measures to combat trafficking in women;

(e) The growing incidence of domestic violence and the failure to prosecute perpetrators under the relevant article of the Code of Criminal Procedure;

(f) The necessity to prove violence in order to obtain a conviction for rape;

(g) The failure to make marital rape an offence.

The next report should provide in much greater detail statistics concerning the position of women by way of their participation in public life, private employment and in other relevant respects. It should also include details on the "National Programme on Improving the Status of Mongolian Women" and on other actions taken to combat all the above violations of human rights by administrative, medical, educational and legal measures. Prosecution for violations, where they constitute offences, should be sought and civil remedies properly enforced.

9. The Committee regrets that it has been largely precluded, through lack of information in the report and in the delegation's response to oral questions, from examining compliance of the State party's judicial procedures with the rights guaranteed under article 14 of the Covenant.

The next report should provide information, in detail, on:

(a) Any threats to the independence and impartiality of the judiciary, including those that may result from low remuneration;

(b) Practical means of guaranteeing all aspects of due process spelt out in article 14 (3) of the Covenant and article 16 (14) of the Constitution;

(c) The right to review of a conviction in every case, including trials at first instance by the Supreme Court under article 50 (1) (1) of the Constitution (art. 14 (5) of the Covenant).

10. The Committee is deeply concerned that the General Department for Implementation of Judicial Decisions, within the Ministry of Justice, has not been able to ensure that victims of human rights violations obtain in practice the benefit of remedies that have been granted by the courts (art. 2 (3) of the Covenant).

The Committee reminds the State party of its obligation under article 2 (3) to ensure that all victims shall have effective remedy for violations of Covenant rights; the State party should ensure that the General Department for Implementation of Judicial Decisions provides such remedies.

11. The Committee is deeply concerned about all aspects of detention before trial; neither the report nor the delegation's answers give adequate details about:

(a) Grounds for detention without bail;

(b) Conditions of detainees' confinement by the police;

(c) Remedies for violations of a detainee's rights by the police;

(d) Means of ensuring that a detainee is promptly brought before a judge or judicial officer;

(e) Statistics on the length of detention within the 26-month maximum;

(f) The extent to which, in practice, the Procurator-General exercises supervision over the necessity for, length and conditions of detention (art. 9 of the Covenant).

The State party should urgently implement its proposal to set up an adequate mechanism to oversee all such matters, to provide individual remedies to detainees whose Covenant rights are violated and generally to review the operation of the Detention Law (1999), in accordance with article 9 (3, 4) of the Covenant.

The State party should give details in its next report on the grounds for which persons may be detained by administrative action and the remedies available to such persons.

12. The Committee is seriously concerned by information it has received that a number of prisoners died of starvation during the reporting period. In this regard, it welcomes the recent changes in law and practice by which food is provided to all prisoners. However, the Committee retains its concern for the lack of other humane conditions of detention, such as timely medical care, sanitation and adequate space for prisoners (art. 10 of the Covenant).

Steps should be taken to improve prison conditions to ensure that imprisonment does not damage prisoners' health and to introduce alternative forms of punishment other than imprisonment; the next periodic report should indicate by what means prisoners may make complaints about their treatment and the effectiveness of the only existing remedy, namely recourse to the courts.

13. The Committee notes the limitation of the categories of persons on whom, and crimes for which, the death sentence may be passed and welcomes the commutation of many death sentences by the Supreme Court or the President to life imprisonment (art. 6 of the Covenant).

The State party is urged to reconsider the necessity to maintain the death penalty.

14. The Constitution or the Law on Emergency Situations, or both, should be amended to protect fully all non-derogable rights enumerated in article 4 of the Covenant.

15. The Committee is concerned about the problems confronting the population of remote regions of the territory described by the delegation (art. 26 of the Covenant).

Efforts should continue to ensure that persons throughout rural areas of the country have access to education and to medical treatment and other public facilities that are available to those who live in urban areas.

16. The Committee regrets the absence of specific information on freedom of religion and beliefs and notes that, in its decision of 12 January 1994, the Constitutional Court considered that certain aspects of the Law on the Relationship between the State and the Church were unconstitutional.

In its next report, the State party should provide specific information on the effect of the decision of the Constitutional Court, on the consequences resulting from the dominant character of Buddhism, and generally on the legal regime and practices with regard to freedom of religion and beliefs as well as on full compliance with article 18 of the Covenant.

17. The Committee notes that the State party recognizes only the Khazakhs as an ethnic, religious or linguistic minority whose members are entitled to the rights specified in article 27, despite the existence of numerous other such minorities in Mongolia.

The State party should ensure respect for the rights of all persons belonging to such minorities in accordance with article 27 of the Covenant.

D. Dissemination of information about the Covenant (article 2)

18. The texts of the Covenant and of the Optional Protocol should be made more widely available to the public, together with an explanation that the former may be relied on in the courts in order to obtain remedies and that the latter provides recourse to the Human Rights Committee.

The State party should emphasize the importance of human rights education and should seek to impart such education and information to the population who live o ıtside urban areas and to the illiterate by appropriate means such as radio and other media.

19. Attention of the State party is drawn to the new guidelines of the Committee on the preparation of reports (CCPR/C/66/GUI/Rev.1). The fifth periodic report should be prepared in accordance with those guidelines and submitted by 31 March 2003. It should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that these concluding observations and the next periodic report be widely disseminated in Mongolia.